IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 616 OF 2003

Ramshankar Rupal Gupta & Jaiswal ..Appellant

versus

The Commissioner, Thane Municipal Corporation ..Respondents

Mr. K. K. Malpathak for the Appellant.

Mr. R. S. Apte for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 15TH SEPTEMBER,2005

ORAL ORDER :

1. Heard advocate for the appellant and the respondents.

2. Appellant is the original plaintiff. Both the lowers courts are against him. His suit for mandatory direction to the Municipal Commissioner directing them to reconstruct the demolished structure, was dismissed, so also the appeal.

3. Only one submission was made by advocate for the appellants that the appellate court, the last

court of fact, did not scrutinise the evidence of the plaintiff and summarily dismissed the appeal by one page reasoning and order. He therefore contended that the appeal requires to be remanded back. I do not find that the matter is required to be remanded back to the lower court to give proper reasoning.

4. It is true that after framing issue as to whether the lower court has committed gross illegality, in rejecting the suit claim and whether it requires any kind of interference. The lower appellate court in paragraph 7 has given certain reasons for dismissal of the appeal. It is also true that the court should have considered the submissions of the appellant at length and then discarded them if he wanted to. However, it cannot be said that there is no application of mind to the three crucial aspects of the matter, viz. (1) whether the suit was bad for want of statutory notice to the Corporation, (2) whether the plaintiff succeeds in proving title to the suit property and (3) whether he is entitled for any mandatory injunction, were considered by the court. It is clear from this reasoning of the appellate court that the appellate court has gone through the judgment and record including the evidence because in paragraph 5 of the judgment of the trial court

the entire cross examination of the appellant is considered and his damaging admissions are also taken into account by the trial court. Even from the evidence of the appellant, the trial court found that he has reasonably failed to prove his right, title and interest over the suit property. Therefore, the appellate court though has not considered all the aspects of the matter, the facts on record do not support the case of the plaintiff at all. The structure of the plaintiff was already demolished long back and therefore he filed a suit for mandatory injunction. Now after the full trial, there is no point in remanding the matter back only for the purpose of giving opportunity to the appellate court to discuss the evidence and then reject it. Therefore there is no substantial question of law involved. Appeal is dismissed.

15.9.2005 (D.G. DESHPANDE, J.)